

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 400

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO ANIMALS; ENACTING THE DANGEROUS DOG ACT;  
AUTHORIZING SEIZURE AND DESTRUCTION OF DANGEROUS DOGS;  
DECLARING EXCEPTIONS; IMPOSING REGISTRATION AND HANDLING  
REQUIREMENTS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Dangerous Dog Act".

Section 2. DEFINITIONS.--As used in the Dangerous Dog  
Act:

A. "animal control authority" means an entity  
authorized to enforce the animal control laws of a city, county  
or state, whether acting alone or in concert with other  
governmental authorities. In those areas not served by an  
animal control authority, the sheriff or municipal law

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1 enforcement shall carry out the duties of the animal control  
2 authority under the Dangerous Dog Act;

3 B. "dangerous dog" means a dog that caused a  
4 serious injury or death to a person or domestic animal;

5 C. "owner" means a person who possesses, harbors,  
6 keeps or has control or custody of a dog or, if that person is  
7 under the age of eighteen, that person's parent or guardian;

8 D. "potentially dangerous dog" means a dog that may  
9 reasonably be assumed to pose a threat to public safety as  
10 demonstrated by the following behaviors:

11 (1) causing an injury to a person or domestic  
12 animal that is less severe than a serious injury;

13 (2) chasing or menacing a person or domestic  
14 animal in an aggressive manner and without provocation; or

15 (3) acting in a highly aggressive manner  
16 within a fenced yard or enclosure and appearing able to jump  
17 out of the yard or enclosure;

18 E. "proper enclosure" means secure confinement  
19 indoors or outdoors, such as in a fenced yard, locked pen or  
20 other structure, that is designed to prevent the animal from  
21 escaping the confined area and young children from entering the  
22 confined area, but does not include chaining, restraining or  
23 otherwise affixing the animal to a stationary object; and

24 F. "serious injury" means a physical injury that  
25 results in broken bones, multiple bites or disfiguring

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1 lacerations requiring sutures or reconstructive surgery.

2 Section 3. EXCEPTIONS.--A dog shall not be declared a  
3 dangerous or potentially dangerous dog if:

4 A. the dog was used by a law enforcement official  
5 for legitimate law enforcement purposes;

6 B. the threat, injury or damage was sustained by a  
7 person or domestic animal who was:

8 (1) trespassing upon premises occupied by the  
9 owner or the dog;

10 (2) provoking, tormenting, abusing or  
11 assaulting the dog or had repeatedly, in the past, provoked,  
12 tormented, abused or assaulted the dog; or

13 (3) committing or attempting to commit a  
14 crime; or

15 C. the dog was:

16 (1) responding to pain or injury;

17 (2) protecting itself or its offspring; or

18 (3) protecting or defending a human being or  
19 domestic animal from attack or assault.

20 Section 4. SEIZURE OF DOG--PETITION TO COURT.--

21 A. If an animal control authority has probable  
22 cause to believe that a dog is a dangerous dog and poses an  
23 imminent threat to public safety, the animal control authority  
24 may apply to a court of competent jurisdiction in the county  
25 where the animal is located for a warrant to seize the animal.

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1           B. If an animal control authority has probable  
2 cause to believe that a dog is a potentially dangerous dog and  
3 poses a threat to public safety, the animal control authority  
4 may apply to a court of competent jurisdiction in the county  
5 where the animal is located for a warrant to seize the animal.

6           C. After seizure, the animal control authority  
7 shall impound the dog pending disposition of the case or until  
8 the owner has fulfilled the requirements for a certificate of  
9 registration pursuant to the provisions of Section 5 of the  
10 Dangerous Dog Act.

11           D. After seizure:

12                   (1) the owner may admit that the dog is  
13 dangerous or potentially dangerous and comply with the  
14 requirements for a certificate of registration pursuant to  
15 Section 5 of the Dangerous Dog Act; or

16                   (2) the animal control authority may, within  
17 fourteen days after seizure of the dog, bring a petition in  
18 court seeking a determination of whether the dog is dangerous  
19 or potentially dangerous. If the court finds, by clear and  
20 convincing evidence, that the dog is dangerous and poses an  
21 imminent threat to public safety or potentially dangerous and  
22 poses a threat to public safety, the court shall order the  
23 owner to comply with the registration and handling requirements  
24 for the dog and obtain a certificate of registration within  
25 thirty days or have the dog humanely destroyed. If the court

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1 does not make the required findings pursuant to this paragraph,  
2 the court shall immediately order the release of the dog to its  
3 owner.

4 E. If the owner does not admit that the dog is  
5 dangerous or potentially dangerous and the animal control  
6 authority does not bring a petition in court within fourteen  
7 days of seizure of the dog, the court shall immediately order  
8 the release of the dog to its owner.

9 F. If the owner admits that the dog is dangerous  
10 and transfers ownership of the dog to the animal control  
11 authority, the animal control authority may humanely destroy  
12 the dog.

13 G. A determination that a dog is not dangerous or  
14 potentially dangerous shall not prevent an animal control  
15 authority from making a subsequent application for seizure  
16 based on the dog's subsequent behavior.

17 Section 5. REGISTRATION AND HANDLING REQUIREMENTS FOR  
18 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.--

19 A. An animal control authority shall issue a  
20 certificate of registration to the owner of a potentially  
21 dangerous dog if the owner establishes that:

22 (1) the owner is able to keep the dog under  
23 control at all times;

24 (2) a license, if applicable, has been issued  
25 pursuant to the requirements of the jurisdiction;

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1 (3) the dog has a current rabies vaccination;

2 (4) the owner has a proper enclosure for the  
3 dog;

4 (5) the owner has paid an annual fee, if  
5 applicable, established by the animal control authority to  
6 register a potentially dangerous dog;

7 (6) the dog has been spayed or neutered;

8 (7) the dog has been implanted with a  
9 microchip containing owner identification information that is  
10 also provided to the animal control authority; and

11 (8) the owner has entered the dog in a  
12 socialization and behavior program approved or offered by the  
13 animal control authority.

14 B. If a dog previously determined to be potentially  
15 dangerous has not exhibited any of the behaviors specified in  
16 Subsection D of Section 2 of the Dangerous Dog Act for thirty-  
17 six consecutive months, the owner may request the animal  
18 control authority in the jurisdiction to lift the requirements  
19 for registration pursuant to this section. If the animal  
20 control authority has no reasonable basis to believe that the  
21 dog has exhibited the behaviors specified, it shall relieve the  
22 owner of the requirements of this section.

23 C. An animal control authority shall issue a  
24 certificate of registration to the owner of a dangerous dog if  
25 the owner, in addition to the requirements of Subsection A of

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1 this section, establishes that:

2 (1) the owner has paid an annual fee, if  
3 applicable, established by the animal control authority to  
4 register a dangerous dog;

5 (2) the owner has written permission of the  
6 property owner or homeowner's association where the dangerous  
7 dog will be kept, if applicable;

8 (3) the dangerous dog will be maintained  
9 exclusively on the owner's property except for medical  
10 treatment or examination;

11 (4) when the dangerous dog is removed from the  
12 owner's property, the dog shall be caged or muzzled and  
13 restrained with a lead no longer than four feet, and the dog  
14 shall be under complete control at all times;

15 (5) the dangerous dog will not be transported  
16 in a vehicle that might allow the dog to escape or gain access  
17 to any person or animal outside the vehicle; and

18 (6) a clearly visible warning sign with a  
19 conspicuous warning symbol indicating that there is a dangerous  
20 dog on the premises is posted where the dog is kept and is  
21 visible from a public roadway or from fifty feet, whichever is  
22 less.

23 D. An animal control authority may order the  
24 immediate impoundment or humane destruction of a dog previously  
25 determined to be a dangerous dog if the owner fails to abide by

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1 the conditions for registration, confinement or handling set  
2 forth in this section.

3 Section 6. PROHIBITED ACTS--PENALTIES.--

4 A. It is unlawful for an owner of a dangerous or  
5 potentially dangerous dog to:

6 (1) keep the dog without a valid certificate  
7 of registration;

8 (2) violate the registration and handling  
9 requirements for the dog;

10 (3) fail to notify the animal control  
11 authority immediately upon:

12 (a) the escape of the dog; or

13 (b) an attack by the dog upon a human  
14 being or a domestic animal;

15 (4) fail to notify the animal control  
16 authority of the dog's death within five business days;

17 (5) fail to notify the animal control  
18 authority within twenty-four hours if the dog has been sold or  
19 given away and provide the name, address and telephone number  
20 of the new owner of the dog;

21 (6) fail to surrender the dog to an animal  
22 control authority for safe confinement pending a determination  
23 of the case when there is reason to believe that the dog poses  
24 an imminent threat to public safety; or

25 (7) fail to comply with special handling or

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1 care requirements for the dog that a court has ordered.

2 B. Whoever violates a provision of Subsection A of  
3 this section is guilty of a misdemeanor and shall be sentenced  
4 in accordance with the provisions of Section 31-19-1 NMSA 1978  
5 and, for a second or subsequent offense, is guilty of a fourth  
6 degree felony and shall be sentenced in accordance with the  
7 provisions of Section 31-18-15 NMSA 1978.

8 C. An owner of a dangerous or potentially dangerous  
9 dog that causes serious injury or death to a domestic animal,  
10 without provocation, is guilty of a fourth degree felony and  
11 shall be sentenced in accordance with the provisions of Section  
12 31-18-15 NMSA 1978.

13 D. An owner of a dangerous or potentially dangerous  
14 dog that causes serious injury to a human being, without  
15 provocation, is guilty of a third degree felony and shall be  
16 sentenced in accordance with the provisions of Section 31-18-15  
17 NMSA 1978.

18 E. An owner of a dangerous or potentially dangerous  
19 dog that causes the death of a human being, without  
20 provocation, is guilty of a third degree felony resulting in  
21 the death of a human being and shall be sentenced in accordance  
22 with the provisions of Section 31-18-15 NMSA 1978.

23 F. Prosecution pursuant to this section requires a  
24 showing that:

25 (1) an owner knew of the propensity of a dog

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1 to inflict serious injury; or

2 (2) the dog had previously been found by a  
3 court to be a dangerous or potentially dangerous dog.

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